

HOUSE BILL No. 1372

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-12-8.5.

Synopsis: Library services authorities. Allows a library services authority to merge with another authority or a nonprofit corporation, or both, to create a nonprofit corporation.

Effective: Upon passage.

Blanton

January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1372

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-12-8.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 8.5. Library Services Authorities; Conversion Into**
5 **Nonprofit Corporation**

6 **Sec. 1. The definitions in IC 36-12-8 apply to this chapter.**

7 **Sec. 2. As used in this chapter, "authority" refers to a library**
8 **services authority established under IC 36-12-8.**

9 **Sec. 3. As used in this chapter, "plan" refers to a plan of**
10 **merger.**

11 **Sec. 4. This chapter applies to the following entities:**

12 **(1) An authority.**

13 **(2) A domestic nonprofit corporation that merges with an**
14 **authority under this chapter.**

15 **Sec. 5. An authority may merge under this chapter with:**

16 **(1) one (1) or more other library services authorities;**

17 **(2) a domestic nonprofit corporation; or**

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(3) both:

(A) one (1) or more other library services authorities; and

(B) a domestic nonprofit corporation;

to form a domestic nonprofit corporation and gain the rights, privileges, immunities, and franchises available under IC 23-17.

Sec. 6. (a) A merger and conversion into a domestic nonprofit corporation under this chapter must be:

(1) proposed by the executive committee of an authority by a resolution of merger and conversion; and

(2) adopted by the affirmative vote of at least two-thirds (2/3) of the qualified and acting voting members of the executive committee physically present at a meeting at which a quorum is present.

The resolution of merger and conversion required under this subsection must include the plan of merger between the authority and the surviving corporation.

(b) A plan of merger included in a resolution of merger and conversion under subsection (a) must include the following:

(1) The name of:

(A) each entity planning to merge; and

(B) the surviving corporation into which the entities plan to merge.

(2) The terms and conditions of the planned merger and conversion.

(3) The manner and basis, if any, of converting the memberships in the authority into memberships in the surviving corporation.

(c) A plan may include the following:

(1) Amendments to, or a restatement of, the articles of incorporation or bylaws of the surviving corporation.

(2) Other provisions relating to the planned merger and conversion.

(3) A delayed effective date.

(d) For a merger under this chapter to be completed, the plan of merger, in addition to being approved under subsection (a), must be approved as follows:

(1) The plan must be approved by the affirmative vote of:

(A) at least two-thirds (2/3) of the qualified and acting members of the board of directors; and

(B) at least two-thirds (2/3) of the members;

of the domestic nonprofit corporation that that will be the surviving corporation after the merger. If the corporation

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that will be the surviving corporation is being formed for purposes of the merger, the approval under this subdivision must be given after the formation of the corporation.

(2) The plan must also be approved by the affirmative vote of at least two-thirds (2/3) of the qualified and acting members of the board of directors of the authority who are present in person or by proxy at a meeting of the board of directors of the authority at which a quorum is present.

(e) If the board of directors of the corporation that that will be the surviving corporation after the merger seeks to have the plan approved by the members of the corporation at a membership meeting, the corporation shall give notice of the proposed membership meeting to the members of the corporation under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider the plan, and the notice must contain or be accompanied by a copy or summary of the plan.

(f) If the executive committee of the authority seeks to have the plan approved by the board of directors of the authority at a meeting of the board of directors, the authority shall give notice of the meeting to the members of the board of directors at least thirty (30) days before the meeting. The notice must state that the purpose of the meeting is to consider the plan, and the notice must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan must include a copy or summary of the articles of incorporation and bylaws that will be in effect after the merger and conversion take effect.

Sec. 7. After a plan of merger is approved under section 6 of this chapter, the surviving corporation shall deliver to the secretary of state articles of merger that include the following:

(1) The plan.

(2) The following concerning the authority that will undergo merger and conversion into a domestic nonprofit corporation under the plan:

(A) If the approval of the members of the authority was not required for the merger, a statement to the effect that approval of the members was not required and a statement that the plan was approved by a sufficient vote of the board of directors and the executive committee of the authority.

(B) If the approval of the members of the authority was required for the merger, the following:

(i) The designation, number of memberships

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outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class undisputedly voting on the plan.

(ii) Either the total number of votes for and votes against the plan cast by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

(3) The following concerning the corporation that will be the surviving corporation after a merger under this chapter:

(A) If the approval of the plan by a person other than the board of directors or members of the corporation is required, a statement that the approval was obtained.

(B) If the approval of the plan by the members of the corporation was not required, a statement to the effect that approval of the members was not required and a statement that the plan was approved by a sufficient vote of the board of directors.

(C) If the approval of the plan by the members of the corporation was required, the following:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class undisputedly voting on the plan.

(ii) Either the total number of votes for and votes against the plan cast by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

Sec. 8. (a) When a merger and conversion under this chapter take effect, the following occur:

(1) An authority that is a party to the merger and conversion merges into the surviving corporation and the separate existence of the authority ceases.

(2) The surviving corporation has all of the rights, privileges, immunities, and powers and is subject to all the duties, restrictions, penalties, and liabilities of a nonprofit corporation organized under IC 23-17.

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(3) The surviving corporation:

(A) does not have the rights, privileges, immunities, and powers; and

(B) is not subject to the duties, restrictions, penalties, and liabilities;

of an authority, including, without limitation, those provided under IC 36-12-8 or IC 36-12-9.

(4) The title to real property and other property owned by each party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject before the merger.

(5) Subject to subdivision (3), the surviving corporation has all of the liabilities and obligations of each party to the merger.

(6) A proceeding pending against a party to the merger may be continued as if the merger and conversion had not occurred, or the surviving corporation may be substituted in the proceeding for the party whose existence ceased.

(7) The articles of incorporation and bylaws of the surviving corporation are amended or restated to the extent provided in the plan.

(b) After a merger and conversion take effect under this chapter, any terms of the plan that are not included in the articles of incorporation are considered to be contract rights only and are not part of the governing document of the corporation.

Sec. 9. A nonprofit corporation organized under IC 23-17 that is a party to a merger with an authority under this chapter shall comply with the applicable requirements of IC 23-17-19 relating to mergers except when those requirements are inconsistent with this chapter.

Sec. 10. (a) The secretary of state shall approve or disapprove articles of merger filed under this chapter after first making the examinations or investigations the secretary of state considers necessary to determine whether the proposed merger and conversion is lawful.

(b) If the secretary of state approves the articles of merger:

(1) the approval is conclusive proof that the parties to the merger satisfied all conditions precedent to the merger; and

(2) the effective date of the merger and conversion is the date of the filing of the articles of merger, unless a delayed effective date is specified in the articles.

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1 **Sec. 11. (a) After a merger and conversion under this chapter**
 2 **become effective, the surviving corporation resulting from the**
 3 **merger and conversion may file for record a file stamped copy of**
 4 **the articles of merger with the county recorder of each county in**
 5 **which is located real property:**

6 **(1) that, when the merger and conversion became effective,**
 7 **was owned by a merging entity; and**

8 **(2) the title to which is transferred by the merger and**
 9 **conversion.**

10 **(b) If a plan sets forth amendments to the articles of**
 11 **incorporation of the surviving corporation that change the**
 12 **surviving corporation's corporate name, the surviving corporation**
 13 **may file for record a file stamped copy of the articles of merger**
 14 **with the county recorder of each county in which is located real**
 15 **property that was owned by the surviving corporation when the**
 16 **merger and conversion became effective.**

17 **(c) A failure to record under this section does not affect the**
 18 **validity of:**

19 **(1) a merger and conversion under this chapter; or**

20 **(2) the change in corporate name of a surviving corporation**
 21 **described in subsection (b).**

22 **SECTION 2. An emergency is declared for this act.**

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